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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

Cr. S-96-0407 DFL PAN

13 v.

ORDER

14 AMADO BETTANCOURT REYES,

15 Defendant.
16 _____/

17 Defendant moved for relief under 28 U.S.C. § 2255 based on
18 the rule set forth in Apprendi v. New Jersey, 530 U.S. 466, 120
19 S.Ct. 2348 (2000). The court denied the motion because the Ninth
20 Circuit has consistently held that "Apprendi does not apply
21 retroactively to cases on initial collateral review." U.S. v.
22 Sanchez-Cervantes, 282 F.3d 664, 671 (9th Cir. 2002). Defendant
23 seeks a certificate of appealability.

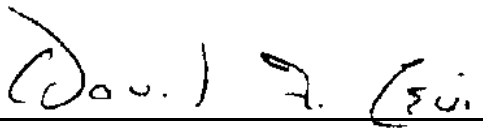
24 Under 28 U.S.C. § 2253 a certificate of appealability is
25 warranted only if the case presents a "substantial question." A
26 substantial question is one that is "'debatable among jurists of

1 reason,'" could be resolved differently by a different court, or
2 is "'adequate to deserve encouragement to proceed further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir. 2002)
3 (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).
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5 This case presents no such "substantial question."
6 Defendant's motion for a certificate of appealability is DENIED.

7 IT IS SO ORDERED.

8 Dated: 3/8/2006

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12 DAVID F. LEVI
13 United States District Judge
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